

ESTTA Tracking number: **ESTTA253010**

Filing date: **12/04/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Dallas Cowboys Football Club, Ltd.
Granted to Date of previous extension	12/07/2008
Address	Cowboys Center, One Cowboys Parkway Irving, TX 75063-4727 UNITED STATES

Name	NFL Properties LLC
Granted to Date of previous extension	12/07/2008
Address	280 Park Avenue New York, NY 10017 UNITED STATES

Attorney information	Kristin H. Altoff Morgan, Lewis & Bockius LLP 1111 Pennsylvania Ave., NW; Attn: TMSU Washington, DC 20004 UNITED STATES trademarks@morganlewis.com, kaltoff@morganlewis.com, chowell@morganlewis.com Phone:202-739-5093
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Applicant Information

Application No	77383001	Publication date	06/10/2008
Opposition Filing Date	12/04/2008	Opposition Period Ends	12/07/2008
Applicant	Super Bakery, Incorporated Suite 455 5700 Corporate Drive Pittsburgh, PA 15237 UNITED STATES		

Goods/Services Affected by Opposition

Class 032. All goods and services in the class are opposed, namely: Sports drinks
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	897133	Application Date	10/28/1969
Registration Date	08/18/1970	Foreign Priority Date	NONE
Word Mark	COWBOYS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U107 (International Class 041). First use: First Use: 1960/04/01 First Use In Commerce: 1960/04/01 ENTERTAINMENT SERVICES-NAMELY, FOOTBALL EXHIBITIONS RENDERED LIVE IN STADIUM AND THROUGH THE MEDIA OF RADIO AND TELEVISION BROADCASTS		


U.S. Registration No.	841044	Application Date	07/14/1966
Registration Date	12/19/1967	Foreign Priority Date	NONE
Word Mark	DALLAS COWBOYS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U107 (International Class 041). First use: First Use: 1960/04/15 First Use In Commerce: 1960/04/15 ENTERTAINMENT SERVICES-NAMELY, FOOTBALL EXHIBITIONS RENDERED LIVE IN STADIA AND THROUGH THE MEDIA OF RADIO AND TELEVISION BROADCASTS		

U.S. Registration No.	1930385	Application Date	08/03/1992
Registration Date	10/31/1995	Foreign Priority Date	NONE
Word Mark	DALLAS COWBOYS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1963/09/00 First Use In Commerce: 1963/09/00 trading cards, posters, magazines and books regarding football, postcards, calendars, wrapping paper, paper gift boxes, paper stickers, paper napkins, [paper towels,] posterbooks, notepads, paper hats and greeting cards Class 025. First use: First Use: 1963/09/00 First Use In Commerce: 1963/09/00 men's, women's and children's clothing and footwear; namely, coaches caps, wool hats,[painters caps], baseball caps, visors, headbands, ear muffs,[knit face masks,] belts, wristbands, T-shirts, tank tops, pajamas, golf shirts, sweaters, sweatshirts, jackets, neckties, braces, cloth bibs, jerseys, night shirts, coats, robes, raincoats, parkas, ponchos, sneakers, gloves, scarves, snow suits, mittens, aprons, down jackets, leather jackets, shorts, sweatpants, jeans, pants,[knickers], socks, underwear, bathing suits and leg warmers		

U.S. Registration No.	2656022	Application Date	07/18/2001
Registration Date	12/03/2002	Foreign Priority Date	NONE
Word Mark	DALLAS COWBOYS AIR CORPS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 2001/05/00 First Use In Commerce: 2001/05/00 Wearing apparel, namely, shirts, hats, jackets, jerseys, sweat suits, running suits, shorts, pants, headbands, wristbands, and socks</p> <p>Class 041. First use: First Use: 2001/05/00 First Use In Commerce: 2001/05/00 ENTERTAINMENT SERVICES NAMELY, FOOTBALL GAMES AND EXHIBITIONS; ORGANIZATION OF SPORTS AND SPORTS EVENTS</p>		

U.S. Registration No.	2770630	Application Date	08/15/2000
Registration Date	10/07/2003	Foreign Priority Date	NONE
Word Mark	DALLASCOWBOYS.COM		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 1999/00/00 First Use In Commerce: 1999/00/00 WEARING APPAREL NAMELY, HATS, SHIRTS, PANTS, SHORTS, JACKETS, RAINWEAR, SWEATSUITS, JERSEYS, SWEAT BANDS, BANDANAS</p> <p>Class 038. First use: First Use: 1999/00/00 First Use In Commerce: 1999/00/00 PROVIDING COMPUTER BULLETIN BOARDS AND REAL-TIME CHAT SESSIONS IN THE FIELDS OF ATHLETICS AND ATHLETIC COMPETITIONS; PROVIDING ON-LINE ELECTRONIC BULLETIN BOARDS FOR TRANSMISSION OF MESSAGES AMONG COMPUTER USERS CONCERNING ATHLETICS AND ATHLETIC COMPETITIONS</p>		

	Class 041. First use: First Use: 1999/00/00 First Use In Commerce: 1999/00/00 EDUCATION AND ENTERTAINMENT SERVICES, NAMELY, PROFESSIONAL FOOTBALL GAMES AND EXHIBITIONS; PROVIDING SPORTS AND ENTERTAINMENT INFORMATION VIA A GLOBAL COMPUTER NETWORK AND VIA A COMMERCIAL ON-LINE SERVICE; FAN CLUB SERVICES; ORGANIZATION OF SPORTS AND SPORTS EVENTS; ENTERTAINMENT SERVICES PROVIDED DURING INTERVALS AT SPORTING EVENTS, NAMELY, THEATRICAL, MUSICAL, AND MULTIMEDIA PERFORMANCES; ARRANGING AND ORGANIZING OF SPORTS COMPETITIONS AND PHYSICAL EDUCATION PROGRAMS, PRODUCTION OF RADIO AND TELEVISION PROGRAMS
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U.S. Registration No.	2687859	Application Date	08/15/2000
Registration Date	02/18/2003	Foreign Priority Date	NONE
Word Mark	DALLASCOWBOYS.COM XTREME ACCESS		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 025. First use: First Use: 1999/00/00 First Use In Commerce: 1999/00/00 WEARING APPAREL NAMELY, HATS, SHIRTS, PANTS, SHORTS, JACKETS, RAINWEAR, SWEATSUITS, JERSEYS, SWEAT BANDS, BANDANAS</p> <p>Class 038. First use: First Use: 1999/00/00 First Use In Commerce: 1999/00/00 PROVIDING COMPUTER BULLETIN BOARDS AND REAL-TIME CHAT SESSIONS IN THE FIELDS OF ATHLETICS AND ATHLETIC COMPETITIONS; PROVIDING ON-LINE ELECTRONIC BULLETIN BOARDS FOR TRANSMISSION OF MESSAGES AMONG COMPUTER USERS CONCERNING ATHLETICS AND ATHLETICS COMPETITIONS</p> <p>Class 041. First use: First Use: 1999/00/00 First Use In Commerce: 1999/00/00 EDUCATION AND ENTERTAINMENT SERVICES, NAMELY, PROFESSIONAL FOOTBALL GAMES AND EXHIBITIONS; PROVIDING SPORTS AND ENTERTAINMENT INFORMATION VIA A GLOBAL COMPUTER NETWORK OR A COMMERCIAL ON-LINE SERVICE; FAN CLUBS; ORGANIZATION OF SPORTS AND SPORTS EVENTS; ENTERTAINMENT SERVICES PROVIDED DURING INTERVALS AT SPORTING EVENTS, NAMELY, THEATRICAL, MUSICAL, AND MULTIMEDIA PERFORMANCES; ARRANGING AND ORGANIZING OF COMPETITIONS, PHYSICAL EDUCATION PROGRAMS; PRODUCTION OF RADIO AND TELEVISION PROGRAMS</p>		

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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Kristin H. Altoff/
Name	Kristin H. Altoff
Date	12/04/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

DALLAS COWBOYS FOOTBALL CLUB,
LTD. and NFL PROPERTIES LLC,

Opposers,

v.

SUPER BAKERY, INCORPORATED,

Applicant.

In re Application Serial No. 77/383,001

COWBOYADE

Published: June 10, 2008

Opposition No. _____

NOTICE OF OPPOSITION

Opposers Dallas Cowboys Football Club, Ltd. and NFL Properties LLC believe they will be damaged by registration of the designation COWBOYADE used to identify “sports drinks” in Class 32, shown in Application Serial No. 77/383,001, filed by Super Bakery, Incorporated (“Applicant”). Opposers hereby oppose registration of the COWBOYADE designation under the provisions of Sections 2(a), 2(d), 13 and 43(c) of the Trademark Act of July 5, 1946 (the “Lanham Act”), 15 U.S.C. §§ 1052(a), 1052(d), 1063 and 1125(c).

As grounds for opposition, Opposers allege that:

1. Opposer Dallas Cowboys Football Club, Ltd. (the “Cowboys”) is a Texas corporation with its principal place of business at Cowboys Center, One Cowboys Parkway, Irving, Texas 75063, which owns and operates a professional football team and provides entertainment services to the public in the form of competitive professional football games. The Cowboys is one of the thirty-two member clubs (the “Member Clubs”) of the National Football League (“NFL”).

2. Opposer NFL Properties LLC (“NFLP” and together with the Cowboys, “Opposers”) is a limited liability company organized and existing under the laws of Delaware with its principal place of business at 280 Park Avenue, New York, New York 10017. NFLP represents the NFL and its thirty-two Member Clubs for the licensing and protection of their names, logos, symbols, and other identifying marks and is charged with protecting these marks and the rights of the NFL and the Member Clubs with respect thereto.

3. For many years, and long before January 29, 2008, the filing date of Applicant’s intent-to-use application, Opposers have used COWBOYS, DALLAS COWBOYS and variations thereof (collectively, the “COWBOYS Marks”) in connection with their business of organizing, conducting, and promoting the Cowboys football franchise.

4. For many years, and long before January 29, 2008, the filing date of Applicant’s intent-to-use application, Opposers, their authorized business partners, sponsors, and/or licensees have used the COWBOYS Marks on or in connection with the sale of a wide variety of services and goods, including, but not limited to, soft drinks and sports drinks.

5. The Cowboys own several federal and state trademark registrations for the COWBOYS Marks for use in connection with entertainment services in the form of football games and exhibitions, including, among others, the following registrations issued by the United States Patent and Trademark Office (“PTO”):

Registration Number	Mark	International Class(es)	Date of First Use
897,133	COWBOYS	41	4/1/1960
841,044	DALLAS COWBOYS	41	4/15/1960
1,930,385	DALLAS COWBOYS	16 25	9/00/1963 9/00/1963

Registration Number	Mark	International Class(es)	Date of First Use
2,656,022	DALLAS COWBOYS AIR CORPS & Design	25 41	5/00/2001 5/00/2001
2,770,630	DALLASCOWBOYS.COM & Design	25 38 41	00/00/1999 00/00/1999 00/00/1999
2,687,859	DALLASCOWBOYS.COM EXTREME ACCESS & Design	25 38 41	00/00/1999 00/00/1999 00/00/1999

6. The registrations referenced above are valid and subsisting, in full force and effect, and constitute *prima facie* and/or conclusive evidence of the Cowboys' exclusive right to use the marks in commerce in connection with the goods and services specified in the registrations.

7. The following registrations are incontestable pursuant to the provisions of Section 15 of the Lanham Act, 15 U.S.C. § 1065, and constitute conclusive evidence of the Cowboys' exclusive right to use the marks in commerce in connection with the goods and services specified in the registrations: Registration Nos. 897,133; 841,044; and 1,930,385.

8. In addition to the federal and state registrations referenced above, the Cowboys own significant common law rights in the COWBOYS Marks by virtue of the continuous use of one or more of the COWBOYS Marks since at least as early as 1960.

9. During their longstanding, widespread and continuous use of the COWBOYS Marks, Opposers and their authorized business partners, sponsors, and licensees have expended considerable time, effort, and money in advertising and publicizing the sale of goods and services bearing the COWBOYS Marks.

10. Opposers and their licensees and sponsors have sold and offered for sale goods and services bearing the COWBOYS Marks in a trading area of broad geographical scope encompassing the United States, including its territories.

11. Opposers and their licensees and sponsors have sold and offered for sale goods and services bearing the COWBOYS Marks in numerous channels of trade.

12. The COWBOYS Marks are symbolic of the extensive goodwill and consumer recognition that Opposers have established through substantial expenditures of time, effort and other resources in the advertising and promotion of the goods and services Opposers sell under the COWBOYS Marks.

13. As a result of Opposers' regular, extensive and well-publicized use, the COWBOYS Marks are famous in the United States and are associated exclusively with Opposers and their high quality goods and services.

14. On January 29, 2008, Super Bakery filed an intent-to-use application under Section 1(b) of the Lanham Act, 15 U.S.C. § 1051 (b), for federal registration of the mark COWBOYADE, Serial No. 77/383,001, for "sports drinks and performance drinks" in Class 32. In an Examiner's Amendment dated May 6, 2008, Applicant amended the goods covered by the BRONCOADE application to cover "sports drinks."

15. Applicant's COWBOYADE designation, Application Serial No. 77/383,001, was published for opposition in the *Official Gazette* on June 10, 2008.

16. The Trademark Trial and Appeal Board extended the opposition period for the COWBOYADE designation by granting Opposers' timely requests for extensions. The opposition period for Application Serial No. 77/383,001 is currently set to expire on December 7, 2008. Opposers, therefore, timely file this opposition.

17. Upon information and belief, Applicant has not used the COWBOYADE designation and has not filed an Amendment to Allege Use under Section 1(c) of the Lanham Act, 15 U.S.C. § 1051 (c), for the COWBOYADE applications.

18. Through its longstanding, widespread and continuous use of and multiple registrations for the COWBOYS Marks, Opposers have acquired exclusive rights in the COWBOYS Marks that substantially predate any rights upon which Applicant may rely.

19. Opposers' rights to the COWBOYS Marks are superior to those of Applicant.

20. Opposers' COWBOYS Marks are famous and became famous before the filing date or any use of the COWBOYADE designation by Applicant.

21. The goods for which Applicant seeks registration under the COWBOYADE designation are related to goods and services in connection with which the COWBOYS Marks are used.

22. The term ADE is a suffix used to indicate a beverage.

23. Applicant has filed applications for marks containing other professional and collegiate team names in connection with the ADE suffix, including PANTHERADE (Serial No. 77/383,064), BRONCOADE (Serial No. 77/382,281), and FALCONADE (Serial No. 77/384,233).

24. Applicant's application for and intended use of the COWBOYADE designation are without the consent, authorization, or license of Opposers.

25. Opposers believe they will be damaged by registration of Applicant's COWBOYADE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, on the ground that the subject designation so resembles the COWBOYS Marks used by Opposers in the United States as to be likely, when used on or in connection with the goods identified in the

COWBOYADE application, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposers and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

26. Opposers believe they will be damaged by registration of the COWBOYADE designation under Section 13 of the Lanham Act, 15 U.S.C. § 1063, because the use and registration of the COWBOYADE designation is likely to dilute the distinctive quality of Opposers' famous COWBOYS Marks, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

27. Registration should be refused pursuant to Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a), on the grounds that Applicant's use of the subject designation will falsely suggest a connection between Applicant and Opposers named herein, to the damage of Opposers.

WHEREFORE, Opposers believe they will be damaged by registration of the COWBOYADE designation shown in Application Serial No. 77/383,001 in Class 32 and respectfully request that the registration sought by Applicant be refused.

Dated: December 4, 2008

Respectfully submitted,

By: /s/ Kristin H. Altoff

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Attorneys for Opposers

DALLAS COWBOYS FOOTBALL CLUB,
LTD. and NFL PROPERTIES LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Opposition has been sent via first class mail, postage pre-paid on this 4th day of December 2008 to:

JOHN W. MCILVAINE
THE WEBB LAW FIRM
436 SEVENTH AVENUE
700 KOPPERS BUILDING
PITTSBURGH, PA 15219

/Kristin H. Altoff/
Kristin H. Altoff